

# ARKANSAS SUPREME COURT

No. CR 08-917

ROGER DALE SIMS  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered

December 19, 2008

PRO SE MOTION FOR PERMISSION  
TO PROCEED WITHOUT CERTIFIED  
RECORD [CIRCUIT COURT OF  
CRAIGHEAD COUNTY, WESTERN  
DISTRICT, CR 2001-516, HON. JOHN  
N. FOGLEMAN, JUDGE]

MOTION FOR PERMISSION TO  
PROCEED TREATED AS MOTION  
FOR RULE ON CLERK AND DENIED.

## PER CURIAM

In 2001, petitioner Roger D. Sims was convicted of rape and sentenced to 420 months' imprisonment. No appeal was taken from the conviction and petitioner subsequently sought various forms of postconviction relief.

Now before us is petitioner's pro se motion for permission to proceed without a certified record so that he may file certain pleadings in this court. Our clerk correctly refused to file petitioner's pro se motion for belated appeal, motion for appointment of counsel, and petition for writ of certiorari, and the pleadings have been tendered. Petitioner's motion for permission to proceed is treated as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b) as petitioner contends that our clerk's refusal to file the tendered documents without a certified record was error.

From a review of the exhibits attached to the motion for permission, as well as the other pleadings tendered to this court, it appears that petitioner seeks to docket appeals from several orders

that were entered below by the trial court.<sup>1</sup> Petitioner timely filed a notice of appeal from each of the orders, which were entered in 2003, 2004 and 2005. However, he failed to timely docket the records on appeal within ninety days from the date the notices of appeal were filed. *See* Ark. R. App. P.–Civ. 5(a) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)).

All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). If a petitioner fails to tender the record in an appeal in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam).

Here, petitioner argues that there is good cause to permit the appeals to be lodged because the circuit clerk failed to timely transmit the records on appeal, including hearing transcripts, to this court. We have long held that when proceeding pro se, it is not the responsibility of the circuit clerk, circuit court or anyone other than the petitioner to perfect an appeal. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). Moreover, the pleadings before us contain several pieces of correspondence between petitioner and the circuit court clerk in which petitioner was informed that it was his responsibility to lodge the appeal records with this court. Petitioner has stated no good reason for the late tender of the records, and the motion for rule on clerk is denied.

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<sup>1</sup>The separate orders denied a motion for transcripts, a petition for writ of habeas corpus, a petition pursuant to Arkansas Rule of Criminal Procedure 37.1, a petition for error coram nobis relief and a petition for writ of habeas corpus pursuant to Act 1780 of 2001 for DNA testing.

Motion for permission to proceed treated as motion for rule on clerk and denied.